82-713

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No. ....

IN THE

Supreme Court of the United States

October Term, 1982

THURSTON MOTOR LINES, INC.,

Petitioner,

vs.

JORDAN K. RAND, LTD.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI.

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Question Presented.

Whether a lawsuit brought by a regulated motor common carrier operating in interstate commerce to recover freight charges from a customer of the carrier is within the jurisdiction of a district court as arising "under any Act of Congress regulating commerce" as provided in 28 U.S.C. §1337.

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Opinions Below.

The opinion of the Court of Appeals has been officially reported at 682 F.2d 811. (A copy of the opinion is included at Appendix A, *infra*, pages 1 through 7.)

The opinion of the District Court for the Central District of California, denominated an "Order of Dismissal" and dated May 5, 1980 (filed May 6, 1980 and entered May 7, 1980) is unreported. (A copy of the Order of Dismissal is included at Appendix A, *infra*, page 8.)

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*All of the parties to this proceeding are listed in the caption of this case. Petitioner Thurston Motor Lines, Inc. has no subsidiary, parent nor affiliate.

Statement of Jurisdictional Grounds.

The judgment of the Court of Appeals for the Ninth Circuit was dated, filed and entered July 27, 1982. No petition for rehearing was filed. This Court has jurisdiction to review the judgment under 28 U.S.C. §1254(1).

Statutes Involved.

The statutes involved include the following: 28 U.S.C. §1337(a); 49 U.S.C. §317(b) (supplanted in 1978 by recodification of the Interstate Commerce Act); 49 U.S.C. §10741(a); 49 U.S.C. §10761(a); Act of October 17, 1978, P.L. 95-473, Section 3, 92 Stat. 1466. The pertinent text is set forth at Appendix B, *infra*, pp. 9-11.

Statement of the Case.

As alleged in the complaint, petitioner Thurston Motor Lines, Inc. (hereinafter "Thurston") is a common carrier by motor vehicle, authorized as such by the Interstate Commerce Commission. Thurston performed transportation services for defendant Jordan K. Rand, Ltd. (hereinafter "Rand") and Rand failed to pay for those services as required by the tariffs of Thurston on file with the ICC. The complaint also alleged that the action arose under an Act of Congress regulating commerce, namely 49 U.S.C. §10741(a).[1] (The aforementioned section is the successor to 49 U.S.C. §§316(b) and 317(b) and the recodification of the Interstate Commerce Act was deemed not to cause any changes in the substantive import of the superseded statutes. Act of October 17, 1978, P.L. 95-473, Section 3.)

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[1]The contention of the Ninth Circuit, in its opinion, that "[n]either party disputes that state law governs what must be alleged in order to recover for the alleged breach of contract" (682 F.2d at 812) is incorrect. The matter was never raised below, and petitioner has consistently proceeded in this action on the belief and basis that its right to recover for its freight charges was and is entirely a creature of *federal* law.

Lastly, Thurston alleged that the district court had original jurisdiction pursuant to 28 U.S.C. §1337. The complaint sought freight charges and interest. (A copy of the complaint is included at Appendix C, *infra*, pp. 12-13).

After the complaint was filed, and before defendant had answered, the district court on its own motion ordered Thurston to show cause why the case should not be dismissed for lack of subject matter jurisdiction in that (1) the amount sought was not sufficient for diversity jurisdiction, and (2) the statutory provision referred to in the complaint, 49 U.S.C. §10741(a), was assertedly not apposite to confer "arising under" jurisdiction over a carrier's attempt to recover its freight charges.

Thurston filed a response to the order to show cause citing cases from this Court and four Circuits, including the Ninth, which hold that a common carrier's suit for freight charges for the interstate carriage of freight is properly cognizable as "arising under" an Act of Congress regulating commerce, with jurisdiction conferred upon the district courts by 28 U.S.C. §1337.

By order dated May 5, 1980, the district court dismissed the action as follows:

> "IT IS ORDERED that this matter should be and hereby is dismissed for want of subject matter jurisdiction; *49 U.S.C. 10741(a), the statute involved, merely prevents discrimination [in trucking] charges; this statute does not provide for bill collection services by a federal court.*"[2]

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[2]The order was prepared and submitted by petitioner's counsel at the court's direction. The proposed order was subsequently amended by the court in the court's own hand, and the inserted language is italicized in the quotation above. Because the handwriting is somewhat unclear, the words "in trucking" are difficult to decipher but appear to be the words which the court intended to use. They are contextually accurate, in any event.

ARGUMENT.

The Judgment of the Ninth Circuit Is in Conflict With Decisions of This Court, and the Third, Seventh and Tenth Circuits and With at Least One of Its Own Prior Decisions.

Most simply stated, the question in this case is whether or not a lawsuit by a federally-regulated common carrier for its freight charges may be filed and prosecuted in a federal district court as an action arising under Acts of Congress regulating interstate commerce. This Court and four Courts of Appeals[3] (including the Ninth Circuit), have previously said that such a lawsuit may; the Ninth Circuit now concludes that the contrary is true. This Court should grant the writ sought in order to resolve a conflict which now exists between the opinion of the Ninth Circuit, below, and the decisions of this Court and those of the Third, Seventh and Tenth Circuits.

The Ninth Circuit's decision below conflicts with the square holding in *Louisville & Nashville Railroad Co. v. Rice*, 247 U.S. 201, 38 S.Ct. 429, 62 L.Ed. 1071 (1918), a case which the Ninth Circuit describes in its opinion as "the most troublesome precedent." 682 F.2d at 812.

The Ninth Circuit's opinion mischaracterizes *Rice* as only standing for the proposition that federal jurisdiction is available or invocable where the parties to the shipping contract agree on a carrier compensation at odds with the carrier's

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[3] *Southern Pac. Co. v. Miller Abbatoir Co.*, 454 F.2d 357 (3d Cir. 1972); *Madler v. Artoe*, 494 F.2d 323 (7th Cir. 1974); *Garrett v. Time-D.C., Inc.*, 502 F.2d 627 (9th Cir. 1974), *cert. den.* 421 U.S. 913 (1975); *Bernstein Bros. Pipe & Mach. Co. v. Denver & R.G.W.Ry. Co.*, 193 F.2d 441 (10th Cir. 1951). The Ninth Circuit in this case also characterized its prior decision in *White v. Atchison, Topeka, Santa Fe Ry.*, 149 F.2d 919, 920 (9th Cir. 1945) as "[a] second troublesome precedent" in addition to the precedent of *Rice*.

published tariffs (or have an "understanding" leading to that result). The *Rice* holding is precisely opposite to the characterization by the Ninth Circuit. The parties in *Rice* did not have the "understanding" the Ninth Circuit has created out of whole cloth (682 F.2d 812-813) nor did they disagree as to the proper amount required to be paid by the tariff. The consignee of the shipment merely attempted to avoid payment by claiming he had an equitable defense to additional, proper charges because he had paid what he thought was due, factored and sold the goods based upon the charges he had paid. The defendant did not claim an *agreement* was reached in violation of the tariff, merely that his conduct and the carrier's tardy billing gave him an estoppel defense.[4]

Notwithstanding that the *Rice* defendant *agreed* with the correctness of the carrier's charges, this Court held that the case arose under an Act of Congress regulating commerce. This Court held that the case arose under an Act of Congress regulating commerce because "as to interstate shipments there can be no question that, since the decision in the *Croninger* case [226 U.S. 291 (1913)] the parties are held to the responsibilities imposed by the federal law, to *the exclusion of all other rules of obligation*." 247 U.S. at 202. In simple words, the Interstate Commerce Act replaces and supersedes private contractual rights, remedies and defenses in respect of a carrier's charges. This Court apparently meant

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[4]Based upon the *facts* there presented, a rigorous analysis of *Rice*, under the Ninth Circuit's approach below, would find jurisdiction when the shipper raised an affirmative defense contrary to published tariffs. But jurisdiction is *not* available in such a circumstance based upon the principles enunciated in this Court s holdings in cases such as *Public Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 248 (1952); *Phillips Petr. Co. v. Texaco, Inc.*, 415 U.S. 125, 127 (1974). Thus, *Rice* cannot stand for the proposition for which the Ninth Circuit seeks to limit or distinguish it.

what it said when it observed that the duties of the carrier and its customers "grow out of and depend upon that act." 247 U.S. at 202.

Either Congress wanted the Interstate Commerce Act to supplant the rights normally associated with private contract or it did not. Unless this Court is willing to overrule *Rice* and declare that Congress meant something else, the Ninth Circuit's decision is wrong.

Disagreement With Other Circuits.

Madler v. Artoe, 494 F.2d 323 (7th Cir. 1974) is a recent case explicitly in conflict with the case below on the issue of subject matter jurisdiction. Madler, the assignee of Consolidated Freightways Corporation of Delaware, brought suit against Artoe for freight charges in the amount of $989.84. Madler alleged that the action arose under the Interstate Commerce Act, and more particularly under 49 U.S.C. §316(b) [a sister statute to §317(b), the predecessors of present 48 U.S.C. §§10741(a) and 10761(a)], and that jurisdiction was proper in the district court pursuant to 28 U.S.C. §1337. The trial court granted defendant's motion to dismiss for want of subject matter jurisdiction. The Seventh Circuit reversed, citing *Bell v. Hood*, 327 U.S. 678, 682-683 (1946), for the proposition that the district courts must entertain suits "arising under" federal law except where the claim appears to be immaterial or made solely for the purpose of obtaining federal court jurisdiction, or where the claim is wholly insubstantial and frivolous. The Seventh Circuit then went on to note that the claim in controversy, $989.84, was neither insubstantial nor frivolous. The court also noted that whether or not an action in contract could be maintained in the state court on the same facts is irrelevant to the issue of federal court jurisdiction.

The trial court in the *Madler* case made precisely the distinction that the Ninth Circuit attempts to make in this case. That is to say that the trial court concluded that existing precedent only permitted federal court jurisdiction over freight charge suits where "their adjudication required the construction of tariffs required by the Act." 494 F.2d at 324. This view was explicitly rejected by the Seventh Circuit, which also found *Rice* viable and controlling.

The most lucid of the circuit court decisions is *Bernstein Bros. Pipe & Machinery Co. v. Denver & R.G.W.R. Co.*, 193 F.2d 441 (10th Cir. 1951). In that case the carrier brought an action in federal court against a shipper to collect an additional $259.21 in transportation charges due on two car-loads of implements shipped from Pennsylvania to Colorado. The defendant asserted both at the trial level and on appeal that the trial court did not have jurisdiction. The Tenth Circuit disagreed and held as follows:

> "The amount of transportation charge for goods shipped in interstate commerce is not a matter of private contract between the parties. The shipper and carrier are alike bound by the established and published tariff under the provisions of [the Interstate Commerce Act]. No contract of the carrier can reduce the amount legally payable or release from liability a shipper who has assumed an obligation to pay the charges. Nor will any act or omission of the carrier estop or preclude it from enforcing payment of the full amount under the tariff by a person liable therefor. . . . The right of the carrier to collect arises out of the provisions of the Interstate Commerce Act.
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> * * *
>
> "Here, since the obligation to pay and the right and duty to collect arise solely by virtue of [analogous sections] of the Interstate Commerce Act, the cause of action sought to be enforced is created by and arises

out of an Act of Congress regulating commerce." 193 F.2d at 444.

The Third Circuit in *Southern Pacific Company v. Miller Abattoir Company*, 454 F.2d 357, 362 (3rd Cir. 1972) has also held that an action for freight charges was properly cognizable as a matter "arising under" an Act of Congress regulating commerce, in reaching its ultimate holding that the carrier's claim for interest was a question of federal law because it touched and affected the total compensation to be paid. *See*, also *Garrett v. Time-D.C., Inc.*, 502 F.2d 627 (9th Cir. 1974), *cert. den.* 421 U.S. 913 (1975).

The rationale of the cases in conflict with the decision below, including *Rice* and *Bernstein* is that there is no common law contractual right abiding in a carrier to recover its charges as a mere private litigant; the carrier must recover whatever charges it can *solely* as its rights may "grow out of and depend upon" the Interstate Commerce Act. (247 U.S. at 202.) As noted above, the *Bernstein* Court, citing this Court's holding in *Rice*, correctly announced that "the amount of a transportation charge for goods shipped in interstate commerce is not a matter of private contract between the parties." (193 F.2d at 444.)

The fact that a defendant in a case such as this does not contest the correctness of the rate charged by the carrier simply does not, as supposed by the Ninth Circuit, dispose of federal jurisdiction. The carrier's right to collect and the customer's obligation to pay is a public, not private, obligation and which public obligation "arises from" the Interstate Commerce Act. Each and every charge which a carrier seeks to recover must be justified by a tariff published or filed in consonance with the Interstate Commerce Act. A federal court does not gain or lose any jurisdiction simply because, prior to the advent of the action, a shipper may choose to or decline to pay a portion of the carrier's charges.

The Ninth Circuit's ultimate *ratio decedendi* in this case is that a shipper (customer) can create federal jurisdiction and a federal claim "arising under" the Interstate Commerce Act, simply by contesting the amount of the charges.

To attempt to define jurisdiction as abiding only in cases involving partial payment or contested charges is simply to misunderstand the nature and origin of the regulated carrier's rights and duties. As this Court noted last term in *Southern Pacific Transportation Co. v. Commercial Metals*, ___ U.S. ___, 102 S.Ct. 1815 (1982):

> "It is perhaps appropriate to note that a carrier has not only the right but also the *duty* to recover its proper charges for services performed. [Citation.] See *Pittsburgh, C.,C. & St.L.R. Co. v. Fink*, 250 U.S. 577, 581-583 (1919). This rule of strict adherence to statutory standards is in line with the historic purpose of the Interstate Commerce Act — to achieve uniformity in freight transportation charges, and thereby to eliminate the discrimination and favoritism that had plagued the railroad industry in the late nineteenth century. *Midstate Horticultural Co. v. Pennsylvania R. Co.*, 320 U.S. 356, 361 (1943); *New York N.H. & H.R. Co. v. ICC*, 200 U.S. 361, 391 (1906)." 102 S.Ct. at 1820.

The scope of the misunderstanding on the part of the Ninth Circuit is best described in its own words:

> "Thurston Motors' claim relies on state contract law and has at most a collateral relationship to the Interstate Commerce Act." 682 F.2d at 812.

In view of the precedents of this Court and of the Courts of Appeals — including the Ninth Circuit before this case — the judgment below is simply wrong and in irreconcilable conflict with established precedent.

The common thread of the well-established precedents which the judgment below unsettles is that federal jurisdiction is available because the integrity of ICC tariffs and regulated-carriers' collection of charges based thereupon remain a matter of explicit, substantive federal law and federal *concern*.

Conclusion.

For the foregoing reasons, petitioner prays that the writ be issued so that the judgment below may be reversed. It is respectfully suggested that summary reversal is appropriate.

Respectfully submitted,

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APPENDIX A.

Opinion.

United States Court of Appeals, for the Ninth Circuit.

Thurston, Motor Lines, Inc., Plaintiff-Appellant, v. Jordan K. Rand, Ltd., Defendant-Appellee. No. 80-5449, DC No. 80-865-AAH.

Filed July 27, 1982.

Appeal from the United States District Court for the Central District of California, A. Andrew Hauk, District Judge, Presiding, Argued and Submitted November 3, 1981.

Before: Choy and Nelson, Circuit Judges, and Ingram,* District Judge.

Choy: Circuit Judge.

This is a simple contract-collection action which normally would have been brought in state court. Thurston Motor Lines seeks to recover $661.41 in motor freight charges that Jordan K. Rand, Ltd. allegedly promised to pay. Thurston Motor sued in federal court solely because the charges agreed upon in the shipping contract complied with the rate and tariff provisions of the Interstate Commerce Act, 49 U.S.C. §§ 10701-10786. The district court held that this tangential relationship to federal law cannot support federal-question jurisdiction under 28 U.S.C. § 1337.[1] We agree.

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*The Honorable William A. Ingram, United States District Judge for the Northern District of California, sitting by designation.

[1]Most cases on federal-question jurisdiction concern 28 U.S.C. § 1331. The statutory test under both § 1331 and § 1337 is whether the case "arises under" federal law. We make essentially the same inquiry in both instances. Carlson v. Coca-Cola Co., 483 F.2d 279, 280 n.1 (9th Cir. 1973).

I

The precise limits of federal-question jurisdiction are uncertain. *See, e.g., Town of Greenhorn v. Baker County*, 596 F.2d 349, 351 (9th Cir. 1979). We have, however, recognized two requirements: "plaintiffs must show that the federal question was 'well-pleaded' and that the claim arose 'directly' under federal law." *Id.*, citing *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d 1072, 1074 (9th Cir. 1976).

"Under the 'well-pleaded complaint' requirement, federal jurisdiction exists only where the plaintiff would be required to plead and prove a proposition of federal law to win a default judgment." *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d at 1074 (citations omitted). Neither party disputes that state law governs what must be alleged in order to recover for the alleged breach of contract. The critical allegations made by Thurston Motor, which seem the type usually made in a state contract-collection action, are that Rand, Ltd. contracted with Thurston Motor to transport certain goods for a set fee, Thurston Motor transported the goods, and Rand, Ltd. refused to pay as promised. Thurston Motor has not identified and we cannot readily discern any proposition of federal law that a court need confront in deciding what, if anything, can be recovered.[2]

Even if in order to win a default judgment Thurston Motor would have to mention that the parties set the shipping fee in accordance with the Act, the case would not arise *directly* under federal law. We can discern no bright line to determine when a plaintiff satisfies this second requirement for federal-question jurisdiction. *See Town of Greenhorn v. Baker County*, 596 F.2d at 352. Instead, we have inquired

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[2]We do not, of course, decide whether a carrier could identify a well-pleaded proposition of federal law in some future case.

generally whether the claim is federal in nature, *Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Comm'n*, 588 F.2d 1216, 1226-27 (9th Cir. 1978), *cert. denied*, 444 U.S. 826 (1979), or whether federal law is basic or collateral to the claim, *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d at 1074. Thurston Motor's claim relies on state contract law and has at most a collateral relationship to the Interstate Commerce Act.

II

Although we find the lack of federal-question jurisdiction obvious, controlling precedent seems to suggest the opposite result at first glance.

The most troublesome case is *Louisville & Nashville Railroad v. Rice*, 247 U.S. 201 (1918). In *Rice*, the Supreme Court found federal-question jurisdiction over a suit to recover $145 allegedly due the carrier for the shipment of livestock interstate under tariffs regulated by the Interstate Commerce Act. A fact we believe essential to the finding of jurisdiction is that the parties had an understanding requiring the carrier to assess *all* charges immediately upon delivery of the livestock. This arrangement enabled the shipper to include the transportation costs in the price at which it sold the livestock. The dispute in *Rice* resulted from the carrier billing the shipper after the delivery and sale for an additional $145 to cover disinfecting the freight cars. Though contrary to the parties' understanding, the additional charge complied with lawful tariffs.

The discrepancy between the parties' understanding and the lawful tariffs is important because unlike the well-pleaded complaint in the case before us, the one in *Rice* could not have alleged that the shipper agreed to pay the amount sought. The carrier there had to rely exclusively on

the Act to override the parties' understanding. *Rice* therefore was not a simple contract-collection action.

Distinguishing between claims that must rely on the Act, as in *Rice*, and those that rely on the parties' agreement, as in the case before us, conforms to the overriding purpose of the Interstate Commerce Act. Congress sought to prohibit carriers from charging different shippers different fees. *Louisville & Nashville Railroad v. United States*, 282 U.S. 740, 749 (1930); *Farley Terminal Co. v. Atchison, Topeka and Santa Fe Railway*, 522 F.2d 1095, 1097 (9th Cir.), *cert. denied*, 423 U.S. 996 (1975). We would not further this end by asserting jurisdiction over Thurston Motor's action to collect a properly-agreed-upon shipping charge.

The Court in *Rice* did not focus on the discrepancy between the understanding and the tariffs in finding jurisdiction. However, our conclusion about the importance of the discrepancy is supported by the only Supreme Court decision which both cites *Rice* as the support for a finding of jurisdiction and discusses a carrier's ability to collect lawful charges. *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516 (1939), concerned a new tariff properly filed with the Interstate Commerce Commission that required shippers to pay for the installation of special grain doors on box cars used to ship grain. In the past, carriers had borne the expense. The shipper in *Lowden* objected to the new tariff, notified its carrier prior to the shipment that it would not pay for the installation, and then refused to pay $374 owed under the tariff. The Supreme Court focused on the discrepancy between the possible understanding of the parties and the new tariff, even framing the issue to be "whether a carrier's charges for services, actually utilized by a shipper and authorized by a tariff requiring prior arrangements or services, are collectible when the services are rendered on orders, preceded or accompanied by denials of legal liabil-

ity." *Id.* at 517. The Supreme Court has never suggested that *Rice* supports jurisdiction outside this context. *See also Roco Worldwide, Inc. v. Constellation Navigation*, 660 F.2d 992, 994 (4th Cir. 1981) (construing *Rice* to involve an agreed-upon undercharge).

We can find no other adequate ground for the jurisdictional holding in *Rice*. The only possibility suggested in *Rice* is that:

> The Interstate Commerce Act requires carrier to collect and consign to pay all lawful charges duly prescribed by the tariff in respect of every shipment. Their duty and obligation grow out of and depend upon that act.

247 U.S. at 202. *See also Southern Pacific Transportation Co. v. Commercial Metals Co.*, 50 U.S.L.W. 4442, 4444 (U.S. Apr. 27, 1982). But the existence of a federal duty to collect lawful charges does not mean that the carrier can bring a simple contract-collection action in federal courts. As long as state courts entertain such lawsuits, the carrier can satisfy its duty without coming into federal court. We understand the federal duty to collect to give rise to federal-question jurisdiction only over lawsuits against carriers which do not collect proper charges.

Unless the Court based its finding of jurisdiction on the discrepancy between the parties' understanding and the lawful tariff, we doubt that *Rice* is still good law. The term "arising under," though once construed expansively, has taken on a narrower meaning.[3] As the Supreme Court noted in its landmark decision, *Gully v. First National Bank*, 299

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[3]Many scholars have analyzed the change. *See, e.g.*, Cohen, *The Broken Compass: The Requirement that a Case Arise "Directly" Under Federal Law*, 115 U. Pa. L. Rev. 890 (1967); Mishkin, *The Federal "Question" in the District Courts*, 53 Colum. L. Rev. 157 (1953); Bergman, *Reappraisal of Federal Question Jurisdiction*, 46 Mich. L. Rev. 17 (1946).

U.S. 109, 113 (1936): "Looking backward we can see that the early cases were less exacting than the recent ones in respect of some of these conditions [for federal-question jurisdiction]."[4] Rather than conclude that *Rice* is one of the outdated "less exacting" cases, we choose to construe *Rice* as holding only that federal-question jurisdiction exists over claims by a carrier for nonpayment of lawful fees when the parties had an understanding or agreement inconsistent with tariffs set in compliance with the Interstate Commerce Act.

A second troublesome precedent, *White v. Atchison, Topeka & Santa Fe Railway*, 149 F.2d 919, 920 (9th Cir. 1945), contains the statement: "Since interstate commerce laws are involved, the district court had jurisdiction . . . ." But the jurisdictional holding in *White* is distinguishable on the same ground as that in *Rice*. The carrier sued to collect from the shipper an amount required by a lawful tariff but contrary to their agreement. For the reasons given above, federal jurisdiction turns on the existence of the discrepancy.

III

We find no adequate basis here for jurisdiction under 28 U.S.C. § 1337. Apparently, the Seventh Circuit Court of Appeals would decide this case differently. *Madler v. Artoe*, 494 F.2d 323 (7th Cir. 1974). *See also Maritime Service Corp. v. Sweet Brokerage De Puerto Rico, Inc.*, 537 F.2d 560, 562 (1st Cir. 1976) (under Shipping Act); *George Transport and Rigging Co. v. International Publications*

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[4]Because *Gully* factually resembles the case before us, a brief review of the holding there is instructive. The defendant had allegedly breached a contractual duty to pay. "There [was] no necessary connection between the enforcement of such a contract according to its terms and the existence of a controversy arising under federal law." 299 U.S. at 114. Consequently, the Court found, as we do here, no federal-question jurisdiction.

Equipment Corp., 425 F. Supp. 1351, 1352 n.2 (E.D. Pa. 1977) (under Interstate Commerce Act). We, however, hold that there is no federal-question jurisdiction.

AFFIRMED.

Order of Dismissal.

United States District Court, Central District of California.

Thurston Motor Lines, Inc., a North Carolina corporation, Plaintiff, vs. Jordan K. Rand, Ltd., a California corporation, Defendant. Case No. CV 80 00865 AAH (Px).

Filed May 6, 1980.

Pursuant to an Order to Show Cause issued on the Court's own motion respecting the existence of federal jurisdiction in this case, an Order to Show Cause Hearing re Jurisdiction was held in this Court on April 21, 1980, and pursuant thereto, the Court makes the following order:

ORDER

The Court, having ordered the plaintiff herein to show cause why this Court should not dismiss this action for want of subject matter jurisdiction; and the Court having received and read the response of the plaintiff herein to the Order to Show Cause, and for good cause appearing:

IT IS ORDERED that this matter should be and hereby is dismissed for want of subject matter jurisdiction; 49 U.S.C. 10741(a), the statute involved, merely prevents discrimination in trucking charges; this statute does not provide for bill collection services by a Federal Court.

Dated: May 5, 1980.

/s/ .....

UNITED STATES DISTRICT JUDGE

APPENDIX B.

§ 1337.

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however*, That the district courts shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11) [49 USCS § 20(11)]), or section 219 of part II of such Act (49 U.S.C. 319 [49 USCS § 319]), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

49 U.S.C. § 317(b) (1977)
(Supplanted in 1978 by Recodification of Interstate Commerce Act)

(b) No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in interstate or foreign commerce except such as are specified in its tariffs: Provided, That the provisions of sections 1(7) and 22 of part I [§§ 1(7) and 22 of this title] shall apply to common carriers by motor vehicles subject to this part [§§ 301-305, 306-327 of this title].

§ 10741.

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title [49 USCS §§ 1050 et seq.] may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

§ 10761.

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under Chapter 105 of this title [49 USCS §§1050 et seq.] shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter [49 USCS §§ 10761 et seq.]. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

Act Oct. 17, 1978, P.L. 95-473, § 3, 92 Stat. 1466, provided:

"(a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be con-

strued as making a substantive change in the laws replaced. Laws enacted after May 15, 1978, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency."

APPENDIX C.
Complaint for Freight Charges.

United States District Court, Central District of California.

Thurston Motor Lines, Inc., a North Carolina corporation, Jordan K. Rand, Ltd., a California corporation, Defendant. Case No. 80 00865.

Filed March 8, 1980.

Plaintiff alleges as follows:

1. This action arises under an Act of Congress regulating commerce, namely 49 USCA Section 10741(a) [formerly Section 217(b) of the Interstate Commerce Act, 49 USCA Section 317(b)]. This court has original jurisdiction of this cause pursuant to 28 USCA Section 1337.

2. Plaintiff is a corporation incorporated under the laws of the State of North Carolina, and authorized to do business in California.

3. The defendant is a corporation incorporated under the laws of the State of California, and doing business within this district.

4. The plaintiff is a common carrier by motor vehicle, authorized as such by the Interstate Commerce Commission, and is authorized to transport general commodities between places in the United States.

5. On or about May 8, 1979, the plaintiff performed transportation services for the defendant according to the abstract of freight bills set out in Exhibit "A" hereto.

6. Plaintiff has not recovered its full lawful charges for the aforesaid services as set forth in its tariffs on file with the Interstate Commerce Commission, and indeed has collected nothing at all.

7. The amount of plaintiff's lawful charges which remains uncollected aggregates $666.41.

8. The defendant has refused to pay the plaintiff its full lawful charges.

9. The plaintiff has been damaged in the foregoing premises in the amount of $666.41.

WHEREFORE, plaintiff prays:

1. For judgment against defendant in the amount of $666.41;

2. For interest from the date of each rendition of transportation service herein until payment;

3. For costs of suit herein; and

4. For such other and further relief as is just in the premises.

Dated: March 5, 1980.

GARFIELD, TEPPER & ASHWORTH,
A Professional Corporation
/s/ By Christopher Ashworth
CHRISTOPHER ASHWORTH
Attorneys for Plaintiff
THURSTON MOTOR LINES, INC.

EXHIBIT "A"

Date	Freight Bill	Amount
5/08/79	16-479230	$241.40
5/08/79	16-479238	424.01
		$666.41